

STATE OF LOUISIANA LEGISLATIVE AUDITOR

Department of Natural Resources
State of Louisiana
Baton Rouge, Louisiana

January 30, 2002



Financial and Compliance Audit Division

Daniel G. Kyle, Ph.D., CPA, CFE
Legislative Auditor

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DEPARTMENT OF NATURAL RESOURCES
STATE OF LOUISIANA
Baton Rouge, Louisiana

Management Letter
Dated December 19, 2001

Under the provisions of state law, this report is a public document. A copy of this report has been submitted to the Governor, to the Attorney General, and to other public officials as required by state law. A copy of this report has been made available for public inspection at the Baton Rouge office of the Legislative Auditor.

January 30, 2002



OFFICE OF
LEGISLATIVE AUDITOR
STATE OF LOUISIANA
BATON ROUGE, LOUISIANA 70804-9397

DANIEL G. KYLE, PH.D., CPA, CFE
LEGISLATIVE AUDITOR

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December 19, 2001

DEPARTMENT OF NATURAL RESOURCES
STATE OF LOUISIANA
Baton Rouge, Louisiana

As part of our audit of the State of Louisiana's financial statements for the year ended June 30, 2001, we considered the Department of Natural Resources' internal control over financial reporting; we examined evidence supporting certain accounts and balances material to the State of Louisiana's financial statements; and we tested the department's compliance with laws and regulations that could have a direct and material effect on the State of Louisiana's financial statements as required by *Government Auditing Standards*.

The Annual Fiscal Report of the Department of Natural Resources is not audited or reviewed by us, and, accordingly, we do not express an opinion on that report. The department's accounts are an integral part of the State of Louisiana's financial statements, upon which the Louisiana Legislative Auditor expresses an opinion.

In our prior management letter on the Department of Natural Resources for the year ended June 30, 2000, we reported a finding relating to inadequate control over movable property. That finding has been resolved by management.

Based on the application of the procedures referred to previously, all significant findings are included in this letter for management's consideration.

Unauthorized Fees Collected

The Department of Natural Resources, Office of Mineral Resources, is charging and collecting fees without the proper legal authority. During the past three years, the department has collected nearly \$8 million in unauthorized fees. The state constitution was amended in 1995 (Article 7, Section 2.1) to require a two-thirds vote of both houses for new or increased fees. According to Attorney General Opinion No. 98-283, fees that are designed to defray the costs of providing a service are considered "fees" for the purpose of Article 7, Section 2.1. Furthermore, Louisiana Revised Statute (R.S.) 36:354, which delineates the powers of the secretary of the Department of Natural Resources, contains no language that would give the secretary general authority to impose fees. In the absence of specific legal authority, the department may not legally impose fees.

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During a review of the statutes that give the department authority to collect certain revenues, no legal authority was found for the Office of Mineral Resources to collect the following fees.

<u>Type of Fee</u>	<u>Total Collections of Past Three Years</u>	<u>Year Fee Began</u>
New mineral lease fees (10% of bonuses)	\$7,314,712	1989
Operating agreement fees (25% of revenues)	343,221	2001
Assignment fees	222,820	1988
Advertised item fees	111,600	1988
Total	<u>\$7,992,353</u>	

The department imposed the fees based on its belief that fees could be imposed if they were promulgated in accordance with the Administrative Procedures Act. However, the Administrative Procedures Act does not authorize the imposition of fees. Rather, it details the procedures that must be followed to impose fees that are otherwise authorized by law. The department's ability to finance normal operating expenditures with self-generated revenues, as currently budgeted, may be affected.

The department should obtain specific legal authority for those fees currently lacking proper authority. Also, the department should consult with the Louisiana Attorney General to determine the appropriate course of action regarding the unauthorized fees that have been collected. Management partially concurred with the finding and noted statutory cites to support its belief that the fees were properly authorized and not affected by the repeal of R.S. 39:55.2 (see Appendix A, pages 1-2).

Additional Comments: R.S. 39.55.2, which was enacted by Act 13 of the First Extraordinary Session of 1988, was repealed by Act 836 of 1989. Therefore, the legal authority to charge the fees was also repealed. In addition, the Administrative Procedures Act does not give authority to assess fees; the Act merely delineates the process whereby statutorily authorized fees are set, levied, and enforced.

Deficiencies in Accounting for Movable Property

The Department of Natural Resources did not perform routine reconciliations of capital outlay expenditures to fixed asset additions. Good internal control requires that adequate control procedures be in place to ensure that the acquisition and valuation of movable property is accurately reflected in the accounting records and that errors would be detected in a timely manner. Furthermore, Louisiana Administrative Code Title 34 Part VII Section 307(A) requires that acquisitions are tagged and information is

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forwarded to the Louisiana Property Assistance Agency (LPAA) within 45 days after receipt of those items.

As of June 30, 2001, the department is responsible for movable property totaling approximately \$13 million. Tests of movable property records from June 30, 2000, through March 31, 2001, revealed errors that would have been detected and corrected timely if routine reconciliations had been performed. The errors included the following:

- Twenty-seven acquisitions totaling \$185,999 were improperly recorded as computer supplies or maintenance.
- Eight professional service expenditures totaling \$203,136 were recorded as acquisitions.
- Twelve acquisitions were not recorded at the historical cost. Nine items were overstated by \$3,719 and three items were understated by \$574.
- Four items (5%) of 81 acquisitions tested were tagged from 77 to 83 days after the items were received. Those four items were valued at \$8,566.

Management's failure to establish adequate procedures for reconciling and/or recording acquisitions allowed errors to occur and not be detected by the department. Failure to maintain accurate movable property records increases the risk of loss from unauthorized use, prevents timely detection of errors, and subjects the department to noncompliance with state regulations.

Management should establish procedures to ensure proper accounting over movable property and to ensure that all acquisitions are reported to LPAA in a timely manner. Management concurred with the finding and recommendation and outlined plans of corrective action (see Appendix A, page 3).

Noncompliance With Performance Progress Report Regulations

The Department of Natural Resources has not established adequate control procedures for some of its key performance indicators to ensure the reliability of the data included in its Performance Progress Reports. R.S. 39:87.3 requires that performance progress reports should provide information on the agency's actual progress toward achievement of performance standards.

The audit of the mid-year performance progress report for the department disclosed that four of the 11 (36%) key performance indicators tested did not have adequate or

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DEPARTMENT OF NATURAL RESOURCES
STATE OF LOUISIANA

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accurate supporting documentation. In addition, three of the exceptions lacked a reasonable system to accumulate actual data.

These conditions occurred because the department did not establish systems or review data to ensure that performance progress reports are accurate and reliable and comply with state laws and regulations. Failure to comply with state laws and regulations concerning performance reporting could result in penalties being assessed against the department.

The Department of Natural Resources should establish reliable procedures to accumulate actual data and an effective review function to ensure that performance progress reports are accurate and reliable and comply with state laws and regulations. Management concurred in part with the finding and provided plans of corrective action but mentioned that they have difficulty with defining adequate documentation (see Appendix A, pages 4-5).

The recommendations in this letter represent, in our judgment, those most likely to bring about beneficial improvements to the operations of the department. The varying nature of the recommendations, their implementation costs, and their potential impact on the operations of the department should be considered in reaching decisions on courses of action. Findings relating to the department's compliance with applicable laws and regulations should be addressed immediately by management.

This letter is intended for the information and use of the department and its management and is not intended to be and should not be used by anyone other than these specified parties. Under Louisiana Revised Statute 24:513, this letter is a public document, and it has been distributed to appropriate public officials.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Daniel G. Kyle", is written over a horizontal line.

Daniel G. Kyle, CPA, CFE
Legislative Auditor

SRT:EFS:DSP:ss

[DNR01]

Appendix A

Management's Corrective Action Plans and Responses to the Findings and Recommendations



M.J. "MIKE" FOSTER, JR.
GOVERNOR

JACK C. CALDWELL
SECRETARY

DEPARTMENT OF NATURAL RESOURCES

December 20, 2001

Dr. Daniel G. Kyle, CPA, CFE
Legislative Auditor
Office of the Legislative Auditor
P.O. Box 94397
Baton Rouge, LA 70804-9387

Dear Dr. Kyle:

The Department of Natural Resources (DNR) partially concurs with the findings related to the collection of unauthorized fees. The DNR offers the following information.

There were four findings of no legal authority for the collection of certain fees from the Office of Mineral Resources (OMR). Statutory authorization for three of the four fees is found in Act 13 of the First Extraordinary Session of 1988. Codified as R.S. 39:55.2, Section 55.2(B) provided that "if the Governor declares a fiscal emergency, any agency of state government performing a service for, providing property to, exercising regulatory authority over, or granting or conferring any benefit upon any person is hereby authorized... to impose or charge said person a fee or charge, ... by adopting a Rule." Section 2 of Act 13 provided that any fee or charge that was imposed which was intended to be in effect for longer than 120 days would remain in effect until such date as provided in the Rule.

These fees were promulgated in a Rule contained in Louisiana Register Volume 14, No. 8, Page 544, dated August 20, 1988, wherein the Department of Natural Resources adopted "...A. Fee for new mineral leases equal to 10 percent of cash payment to be submitted at time of execution of lease. Fee of \$100 for processing assignments affecting state mineral leases. Fee of \$500 for processing unitization agreements and other advertised instruments..." The Rule further provided that "...These fees shall be in effect from June 24, 1988 until July 1, 1992,..."

These fees subsequently appeared in a Notice of Intent contained in Louisiana Register Volume 17, No. 10, Page 1019, dated October 20, 1991, in Section 103 which provided, in pertinent part, "...The Department of Natural Resources...has adopted...A. Fee for new mineral leases equal to 10 percent of cash payment to be submitted at time of execution of lease. B. Fee of \$100 for processing assignments affecting state mineral leases. C. Fee of \$500 for processing unitization

Dr. Daniel Kyle
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December 20, 2001

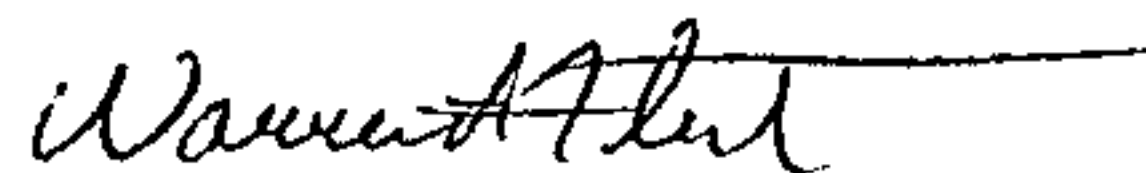
agreements and other advertised instruments...". These fees were promulgated in a Rule contained in Louisiana Register Volume 18, No. 1, Page 71, dated January 20, 1992, in Section 103. Paragraph I of that Section provided further that "This fee schedule...shall be re-promulgated, and the provisions hereof shall be in full force and effect as of March 1, 1992, and shall continue in force until cancelled by the Office of Mineral Resources, any other order of a duly authorized person or entity, or by order of a proper court of law." This Rule was codified in Louisiana Administrative Code Title 43, Part V, Chapter 1, Section 103 at Page 83.

The fees were again the subject of a Notice of Intent contained in Louisiana Register Volume 25, No. 11, Page 2327, dated November 20, 1999, wherein it was provided, in pertinent part, "The Office of Mineral Resources, Department of Natural Resources, proposes to amend LAC 43, Part V. The proposed Rule change adds additional fees and charges to the fee schedule of the Office of Mineral Resources which historically have been and are presently being collected and recognized by the Legislative Fiscal Office as self-generated funds for said Office...". These fees were found in Section 301, as follows, "1. Fee for new mineral leases equal to 10 percent of cash payment to be submitted no later than 10 days after acceptance of bid and awarding of lease. 2. Fee of \$100 for processing docketed items, such as assignments, not including advertised docketed items. 3. Fee of \$500 for processing advertised docketed items, such as unitization agreements...". Paragraph 24 provided further, "...this schedule of fees and charges, as amended, shall be re-promulgated and the provisions hereof shall be in full force and effect as of January 1, 2000, and shall continue in force until cancelled by the Office of Mineral Resources, any other order by a duly authorized person or entity, or by order of a court of law of proper venue and authority." These fees were adopted in the Rule found in Louisiana Register Volume 26, No. 5, Page 1063, dated May 20, 2000. The Rule incorporated these fees as advertised in the Notice of Intent and provided that they would be in full force and effect as of January 1, 2000, and would remain in force until cancelled by the Office of Mineral Resources, any other order by a duly authorized person or entity, or by order of a court of law of proper venue and authority. These fees remain in effect.

The DNR feels that these fees, statutorily authorized by Act 13, were properly implemented and remain in effect. The Constitutional amendment of Article 7, Section 2.1 in 1995 affects only new or increased fees. These fees were neither new, nor increased, and therefore, unaffected by the constitutional amendment.

Should you have any questions concerning this response, please contact me at your earliest convenience.

Very truly yours,



Warren A. Fleet
General Counsel

WAF/nmj



M.J. "MIKE" FOSTER, JR.
GOVERNOR

JACK C. CALDWELL
SECRETARY

DEPARTMENT OF NATURAL RESOURCES

October 25, 2001

Dr. Daniel G. Kyle, CPA, CFE
Legislative Auditor
Office of the Legislative Auditor
Post Office Box 94397
Baton Rouge, Louisiana 70804-9387

RE: Deficiencies in Accounting for Movable Property

Dear Dr. Kyle:

The Department of Natural Resources concurs with the finding entitled "Deficiencies in Accounting for Movable Property" and offers the following response:

We agree that twenty-seven acquisitions were improperly recorded as supplies. Six of these items were corrected after discovered by DNR. The balance were corrected prior to the close of the fiscal year. A reconciliation of acquisition expenditures to additions of equipment to the LPAA Property Management System will be performed each month to eliminate this in the future.

The costs of the Department's contract for conversion of paper well electric logs to digitized images, while properly coded to the major expenditure code Other Charges, were erroneously coded to the sub-object Other Charges-Acquisitions. These expenditures should have been coded to Other Charges-Professional Services. A change order has been issued to code the remaining balance of the purchase order to the proper sub-object of expenditures.

There was a problem with the fact that the DNR Purchasing Section uses the State Contract price as the value of equipment when it is received and entered into the LPAA property control system. On occasions, the price of equipment is discounted from the State Contract price and such discount is reflected in the invoice amount paid by the accounting section. A reconciliation of acquisition expenditures to additions of equipment to the LPAA Property Management System will be performed each month to eliminate this in the future.

Three of the items not tagged in a timely manner were components of a postage meter and the fourth was a data logger. This failure was due to employee oversight. This employee was counseled in this matter.

Should you have any questions about this response, you may call me at 342-4534.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert D. Harper".

Robert D. Harper
Undersecretary

RDH/mjs



M.J. "MIKE" FOSTER, JR.
GOVERNOR

JACK C. CALDWELL
SECRETARY

DEPARTMENT OF NATURAL RESOURCES

December 4, 2001

Dr. Daniel G. Kyle, CPA, CFE
Legislative Auditor
Office of the Legislative Auditor
Post Office Box 94397
Baton Rouge, Louisiana 70804-9387

Dear Dr. Kyle:

The Department concurs in part with your finding of non-compliance with Performance Progress Report Regulations. The Department has set up a system by which there is a person responsible for each indicator and the submission of the indicator is approved by the Assistant Secretary, equivalent or designee. Our difficulty has been with defining adequate documentation. Specifically, in the case of the three indicators in question:

Office of the Secretary

Percentage of Project Complete (inadequate documentation)
Percentage of Method Devised (inadequate documentation)

We are aware of the problems with documentation on last year's performance indicators. Ms. Sandra Thompson Decoteau, Director of the Atchafalaya Basin Program will tighten up the procedures for developing and compiling adequate documentation and will be the responsible person for the corrective action.

Office of Coastal Restoration and Management

Percentage of Projects Maintained and Operated at a Fully Effective Level (inadequate documentation)

We concur that the documentation was inadequate to support the performance indicator. After review we feel the documentation measured program output but the indicator itself was to measure a program outcome. A formal system will be created to document the level at which each project is maintained and operated by Assistant Secretary Randy Hanchey.

Dr. Daniel G. Kyle
December 4, 2001
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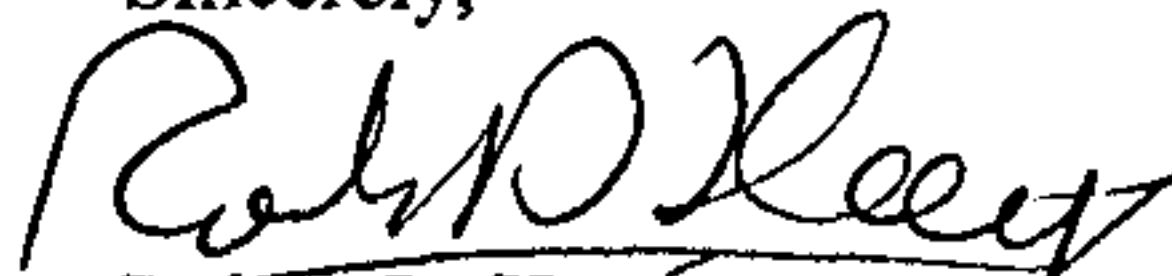
Total Impressions, Photocopying, and Offsets (errors in documentation)

The errors in documentation were the result of data entry problems. This program has been transferred to the Division of Administration in accordance with SECURE recommendations and they are being advised of this problem.

In closing, please rest assured that the Department of Natural Resources has a commitment to implementing the Performance Progress Report Regulations. We have demonstrated that commitment as far back as January, 1999 when we implemented a formal departmental policy. We are, however, struggling with defining adequate documentation in a manner agreeable to all the parties involved.

We look forward to working with you and your staff to resolve these problems.

Sincerely,


Robert D. Harper
Undersecretary

RDH/mg

c: Jack C. Caldwell, Secretary

Randy Hanchey, Assistant Secretary
Office of Coastal Restoration & Management

Sandra Thompson Decoteau, Director
Atchafalaya Basin Program